

VZCZCXR08389
PP RUEHKW
DE RUEHWR #0648/01 1760531
ZNR UUUUU ZZH
P 250531Z JUN 09
FM AMEMBASSY WARSAW
TO RUEHC/SECSTATE WASHDC PRIORITY 8491
INFO RUEHRL/AMEMBASSY BERLIN 1006
RUEHBM/AMEMBASSY BUCHAREST 0644
RUEHUP/AMEMBASSY BUDAPEST 0818
RUEHPG/AMEMBASSY PRAGUE 3504
RUEHRA/AMEMBASSY RIGA 1572
RUEHVL/AMEMBASSY VILNIUS 6882
RUEHKW/AMCONSUL KRAKOW 2289

UNCLAS SECTION 01 OF 04 WARSAW 000648

SENSITIVE
SIPDIS

STATE FOR L/CID SDRAEMEL, EUR/OHI JBECKER & EUR/CE TYEAGER

E.O. 12958: N/A

TAGS: [ECON](#) [GM](#) [ODIP](#) [PREL](#) [XG](#) [XH](#) [XT](#) [PL](#)

SUBJECT: PROPERTY RESTITUTION AND REAL PROPERTY MARKET IN POLAND

REF: A. STATE 62772
[1B.](#) 08 WARSAW 1138

[¶11.](#) (U) Summary: "Clouds" on title associated with property confiscations related to the Holocaust and post-war Communist upheavals have several effects on the Polish real estate market. Property may be kept off the market by unclear title or a pending restitution claim, sometimes driving up the price of near-by property with a clean title. Where the Communist government failed to record properly an expropriation, the "former" owner may scurry to sell the property before government authorities can correct the error. Restitution cases usually take years, and the associated legal costs can be heavy. Title insurance is available, but only to large developers. The effects on the real estate market are broadly the same throughout Poland. There is no formal distinction between the situation of Holocaust victims and other persons whose property was taken, although some historical measures -- such as time bars for filing a claim, or the settlement of claims by an international agreement -- may disproportionately affect heirs of persons who fled Poland during or after World War II. Restitution legislation remains stalled. End summary.

The Land Registry System

[¶12.](#) (U) In Poland, the most important information regarding the legal status of real property is contained in the land and mortgage registers maintained by regional courts ("sady okregowe"). The registers record the owner, nature of ownership rights (for example, fee simple or long-term lease), mortgages and encumbrances (liens, etc.) There is a legal presumption that entries in the registers are accurate and reflect true title and actual legal status of real property.

[¶13.](#) (U) Because mistakes, inaccuracies or gaps in the land and mortgage registers can invalidate a real property transaction, such errors can cause real property transactions to be postponed for months or years. Polish law specifies the procedure to correct errors in the land and mortgage registers. Depending on the scope of the inaccuracies, or what information is missing, the procedure can take from several months to many years. For example, a request to delete a mortgage that was paid off long ago may be dispatched "relatively quickly," i.e., within three to six months, according to Halina Wieckowska, a Warsaw real estate lawyer.

¶4. (U) However, cases seeking restitution of expropriated property are more complex. (NOTE: Because Poland does not yet have legislation that provides an administrative mechanism for private property restitution/compensation, all such claims have to be handled through the court system.) Frequently, before a case can be initiated, claimants must gather evidence from multiple agencies and jurisdictions. According to three real estate lawyers in the firm Miller Canfield, in Warsaw the process involves several steps. First one must obtain a decree from a regional court recognizing the claimant as the legal heir to the owner listed in the land and mortgage registers. Then, the claimant must file a petition with the local government requesting revocation of the original expropriation decision. The local government has three months to respond. If it denies the request, the claimant commences an action in an administrative court. Appeal from the administrative court is to the Supreme Court. In Warsaw, these cases take three to five years minimum, and sometimes as long as 15 years, the Miller Canfield lawyers said. The associated legal costs "may be quite high," Wieckowska stated.

Roots and Scope of the Problem

¶5. (U) The Polish government acquired land (including "abandoned property" that had belonged to Jews before the Holocaust) via different legal acts. In 1944, the Communist regime expropriated industrial property and all agricultural estates and forests exceeding 50 hectares. Land in areas

WARSAW 00000648 002 OF 004

that had been part of Germany came into Polish government ownership following the Potsdam Conference. As the Communists consolidated power, they tried to force owners of smaller agricultural plots to collectivize, but because of popular resistance were unable to carry this through. Roughly 80% of agricultural holdings smaller than 50 hectares remained in private hands throughout the Communist period. The expropriation acts often contained a clause barring claims seeking to regain property unless such claims were raised by a certain date. Many people declined to file such claims, believing it would be a futile act that would expose them to Communist authorities' wrath. In other cases, heirs were living outside of Poland or were unaware of having a claim on property. Furthermore, in some cases the government claims to have obtained title through adverse possession. These maneuvers particularly disadvantage persons who fled abroad, including Jews who left Poland after anti-Semitic events in 1968.

¶6. (U) When the Communists expropriated property, they often neglected to ensure the changes in ownership were recorded in the land and mortgage registers. An April 2009 study by Poland's Supreme Chamber of Control (NIK), which has a similar role to the U.S. Government Accountability Office, found that ownership rights are not properly documented in the land and mortgage registers for 60 percent of the properties belonging to the Polish State Treasury, or for 30 percent of those belonging to local governments. Where the land and mortgage registers are not in order, government agencies lose money from unpaid rents or property taxes.

¶7. (U) Over the last seven years, the number of requests for corrections to the land and mortgage registers almost doubled. However, the courts are keeping up with the increased load; the number of requests resolved each year also has nearly doubled. According to NIK, at the beginning of 2008, 577,000 requests were pending. An additional 3.56 million requests were lodged during 2008. However, during the year, the courts disposed of 3.57 million requests, leaving 564,000 cases pending at the end of 2008.

The "Recovered Territories"

¶18. (SBU) In 2006, a group representing Germans expelled from territory that became Polish at the end of World War II filed petitions with the European Human Rights Court seeking compensation. The German government and the main expellee association in Germany declined to support the group's compensation claims. In 2008, the Court determined it was not competent to render a judgment in the matter. Nevertheless, the possibility that German expellees could claim restitution remains a highly sensitive issue in Polish politics.

Effects on the Market

¶19. (U) Rapidly increasing property values in Poland over the past several years have been primarily the result of two factors: Poland's entrance into the EU and legislation passed in 2004 allowing landlords to increase rents to near free market value. In areas like Kazimierz, a Krakow neighborhood where the majority of property before World War II was Jewish-owned, cloudy titles have contributed to increasing property values because relatively few properties come up for sale on the open market. Those that do are highly prized for their location. Of those properties that are sold, most are purchased after laborious work by property developers who have the means to track down previous owners now living outside of Poland and then spend months or years working the purchase through the Polish legal system.

¶10. (U) Restitution questions do block some real estate sales. For example, a developer may be interested in buying Warsaw property putatively owned by the Polish State Treasury. However, if an heir makes a restitution claim, the property cannot be sold during the pendency of the claim.

¶11. (U) Conversely, disorder in the registers may have

WARSAW 00000648 003 OF 004

spurred some sales. The Miller Canfield lawyers stated that in areas of northeast Poland where land was expropriated, but the expropriation was not properly recorded, the owners of record have rushed to sell. In such cases, the purchaser may be protected against the state later asserting a claim by showing that he or she relied on the information in the land and mortgage registers. However, Wieckowska noted that in some cases expropriated property may be returned to a prior owner even though the current "owner" relied in good faith on the registers.

¶12. (U) U.S. firms introduced title insurance into Poland about seven or eight years ago, but it is only available to large developers. Banks require title insurance for loans for large projects, such as construction of an entire apartment building. However, banks do not demand title insurance to issue a mortgage for an individual apartment; in those cases the bank takes its "comfort" from the legal presumption that the land and mortgage registers are accurate.

¶13. (SBU) Przemysl, a town on the Polish-Ukrainian border, provides one example of the challenges of Holocaust restitution. Before World War II, Przemysl's 20,000 Jews made up a third of the population. Deputy Mayor Wieslaw Jurkiewicz told ConOff that there is a saying in Przemysl that out of every three buildings one belongs to the city, one to the church, and one to the Jewish community. Some communal property, such as the New Synagogue, has been "returned" to the Foundation for the Preservation of Jewish Heritage in Poland, but 55 restitution cases remain pending. "It is not sufficient to say, 'we all know this was the property of Jewish people.' You need proof," Jurkiewicz stated. He added that, due to the disputed ownership of many properties in Przemysl, the current occupants are unwilling to invest in the buildings, causing the buildings to fall

into disrepair.

Hitting Close to Home

¶14. (SBU) Restitution questions touch the property where both U.S. Embassy Warsaw and the Consulate General in Krakow are located. Regarding Krakow, the Jewish heirs to the Consulate's two buildings, who now live in Brazil, agreed to sell their rights in the property to another private citizen, and their title was acknowledged by a Polish court. However, the city had claimed ownership of the buildings since the 1944 expropriation decrees, and was faced with losing the lucrative USG rent. The city appealed the transfer of title.

The city lost its appeal on one building, and an initial appeal on the second, but continues to attempt to block the sale. The Krakow case illustrates a major obstacle to passing comprehensive restitution legislation: government entities' reluctance to lose thousands of income-generating properties nation-wide.

¶15. (SBU) In Warsaw, the land on which the Embassy sits was owned before World War II by members of a well-known family of Polish nobles. For over a decade, they have been seeking restitution of the land from the Polish government in various administrative and court proceedings. A key issue is whether one of the claimants received compensation from the British government under a claims settlement agreement, and, if so, whether this bars further relief from the Polish courts. The United States and Poland concluded a similar agreement in ¶1960.

Status of Draft Restitution Legislation

¶16. (SBU) In September 2008, Poland's Treasury Ministry completed draft legislation that would provide administrative mechanisms for claimants to receive partial compensation for WWII and communist-era private property confiscations. Since that time, the legislation has been bogged down in an inter-ministerial clearance process, mainly because of financial objections raised by the Finance and Agriculture Ministries and regional governments. The draft legislation (ref B) establishes a PLN 20 billion (approx. USD 6.15 billion) compensation fund from which claims would be paid.

WARSAW 00000648 004 OF 004

The fund would be financed by the sale of government-owned properties and local tax revenues, and supplemented with funds from the national budget. Claims would be paid over a fifteen year period. The Treasury Ministry estimates claimants would be paid approximately 15 to 20 percent of the value of their claim, depending on the total number of claims filed. According to the Treasury Ministry, Jewish-owned property makes up about 20 percent of all property covered by the legislation. (Note: The draft legislation does not cover heirless property.)

¶17. (SBU) Contacts at the Treasury Ministry concede the inter-ministerial process has been more complicated and time-consuming than Prime Minister Tusk and other Polish officials initially anticipated. Aside from the financial concerns, which have recently been magnified by the Polish government's almost obsessive commitment to avoid deficit spending in the middle of a global economic crisis, ministries were instructed to anticipate objections that might lead to potentially destructive amendments in parliament and to preempt legal challenges in the Constitutional Tribunal. While the technical issues have been largely resolved, ministries remain concerned about the potential financial implications, especially in the wake of calls for ministries to reduce spending further. In particular, local governments have objected to the use of local tax revenue to finance the compensation fund. More

recently, declining property values have led the Agriculture Ministry to suggest that government-owned real estate be leased, rather than sold off altogether. While the Polish government theoretically could ignore these objections and move the legislation to the parliament, objectionable provisions would probably be removed via parliamentary amendment, leaving the national budget to foot the entire bill -- a development the Finance Ministry is keen to avoid.

¶18. (U) This is a joint cable from Embassy Warsaw and Consulate General Krakow. U.S. Embassy Berlin also contributed to this cable.

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